

**Letter of Findings: 01-20160231
Individual Income Tax
For the Year 2011**

NOTICE: IC § 6-8.1-3-3.5 and IC § 4-22-7-7 require the publication of this document in the Indiana Register. This document provides the general public with information about the Department's official position concerning a specific set of facts and issues. This document is effective on its date of publication and remains in effect until the date it is superseded or deleted by the publication of another document in the Indiana Register. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Letter of Findings.

HOLDING

By both intent and conduct, former Indiana resident provided sufficient evidence of establishing an out-of-state residency prior to 2011 and was not required to file a 2011 Indiana income tax return.

ISSUE

I. Individual Income Tax - Residency.

Authority: IC § 6-1.1-12-37(a)(2); IC § 6-1.1-12-37(f); IC § 6-3-2-1(a); IC § 6-3-1-12; IC § 6-8.1-5-1(c); Dept. of State Revenue v. Caterpillar, Inc., 15 N.E.3d 579 (Ind. 2014); Indiana Dep't of State Revenue v. Rent-A-Center East, Inc., 963 N.E.2d 463 (Ind. 2012); State Election Board v. Bayh, 521 N.E.2d 1313 (Ind. 1988); In the Matter of Evrard, 333 N.E.2d 765 (Ind. 1975); Board of Medical Registration and Examination v. Turner, 168 N.E.2d 193 (Ind. 1960); Croop v. Walton, 157 N.E. 275 (Ind. 1927); Culbertson v. Bd. Of Comm'rs of Floyd County, 52 Ind. 361 (1876); Wendt LLP v. Indiana Dep't of State Revenue, 977 N.E.2d 480 (Ind. Tax Ct. 2012); Scopelite v. Indiana Dep't of Local Gov't Fin., 939 N.E.2d 1138 (Ind. Tax Ct. 2010); Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue, 867 N.E.2d 289 (Ind. Tax Ct. 2007); [45 IAC 3.1-1-22](#).

Taxpayer argues that he was not an Indiana resident during 2011 and was not required to file a 2011 Indiana tax return as a full-year resident of this state.

STATEMENT OF FACTS

Taxpayer formerly lived in Indiana and owned a home here. Taxpayer formerly filed Indiana individual income tax returns as a full-year Indiana resident.

In October 2014, the Indiana Department of Revenue ("Department") sent Taxpayer a notice stating that "we have determined that you have unreported income for tax year 2011."

The letter asked Taxpayer to file a 2011 Indiana income tax return or respond in writing "that explains why you were not required to file a 2011 Indiana income return." With that explanation, the Department asked Taxpayer to "provide supporting documentation"

Taxpayer's representative responded stating that Taxpayer's Indiana residence ended March 2008 and "was not an Indiana resident in 2011, had no Indiana income in 2011 and . . . was not required to file a 2011 Indiana income tax return."

Taxpayer protested the Department's proposed assessment of 2011 individual income tax. An administrative hearing was conducted during which Taxpayer's representative explained the basis for the protest. This Letter of Findings results.

I. Individual Income Tax - Residency.

DISCUSSION

The issue is whether Taxpayer was a resident of Indiana during 2011 and required to file an Indiana income tax return that year.

Taxpayer states that his employer required him to relocate to North Carolina in 2008. According to Taxpayer, he remained in North Carolina until 2010 when his employer again required him to move. Taxpayer relocated to Tennessee where - according to Taxpayer - he purchased and maintained a home. However, Taxpayer concedes that he maintained his former Indiana residence as a "vacation home" during the years he lived in North Carolina and Tennessee.

Tax assessments are prima facie evidence that the Department's claim for the unpaid tax is valid, and each taxpayer bears the burden of proving that any assessment is incorrect. IC § 6-8.1-5-1(c); *Indiana Dep't of State Revenue v. Rent-A-Center East, Inc.*, 963 N.E.2d 463, 466 (Ind. 2012); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007). Thus, a taxpayer is required to provide documentation explaining and supporting his or her challenge that the Department's position is wrong. Poorly developed and non-cogent arguments are subject to waiver. *Scopelite v. Indiana Dep't of Local Gov't Fin.*, 939 N.E.2d 1138, 1145 (Ind. Tax Ct. 2010); *Wendt LLP v. Indiana Dep't of State Revenue*, 977 N.E.2d 480, 486 n.9 (Ind. Tax Ct. 2012). In reviewing a taxpayer's argument, the Indiana Supreme Court has held, that when it examines a statute that an agency is "charged with enforcing . . . we defer to the agency's reasonable interpretation of [the] statute even over an equally reasonable interpretation by another party." *Dept. of State Revenue v. Caterpillar, Inc.*, 15 N.E.3d 579, 583 (Ind. 2014).

Indiana imposes an income tax on "the adjusted gross income of every resident person" IC § 6-3-2-1(a). For income tax purposes, "The term 'resident' includes (a) any individual who was domiciled in this state during the taxable year, or (b) any individual who maintains a permanent place of residence in this state and spends more than one hundred eighty-three (183) days of the taxable year within this state" IC § 6-3-1-12.

To establish a domicile, a taxpayer "must be physically present at a place, and must have the simultaneous intent of establishing a home at that place." [45 IAC 3.1-1-22](#). For income tax purposes, "a person has only one domicile at a given time even though that person maintains more than one residence at that time." *Id.* Additionally, "Once a domicile has been established, it remains until the conditions necessary for a change of domicile occur." *Id.* "To effect a change of domicile, there must be an abandonment of the first domicile with an intention not to return to it, and there must be a new domicile acquired by residence elsewhere with an intention of residing there permanently, or at least indefinitely." *Croop v. Walton*, 157 N.E. 275, 278 (Ind. 1927).

In *State Election Board v. Bayh*, 521 N.E.2d 1313 (Ind. 1988), the Indiana Supreme Court considered the standard by which a "domicile" is established. The court determined that Mr. Bayh met the residency requirement for the office of Governor because Mr. Bayh's domicile remained in Indiana even though he moved to different states for various reasons for many years. Specifically, the court stated, in relevant part, that:

Once acquired, domicile is presumed to continue because "every man has a residence somewhere, and . . . he does not lose the one until he has gained one in another place." Establishing a new residence or domicile terminates the former domicile. A change of domicile requires an actual moving with an intent to go to a given place and remain there. "It must be an intention coupled with acts evidencing that intention to make the new domicile a home in fact [T]here must be the intention to abandon the old domicile; the intention to acquire a new one; and residence in the new place in order to accomplish a change of domicile." A person who leaves his place of residence temporarily, but with the intention of returning, has not lost his original residence. *Id.* 1317 (Internal citations omitted).

The Indiana Supreme Court concluded that:

Residency requires a definite intention and "evidence of acts undertaken in furtherance of the requisite intent, which makes the intent manifest and believable." A self-serving statement of intent is not sufficient to find that a new residence has been established. Intent and conduct must converge to establish a new domicile. *Id.* at 1318 (Internal citations omitted).

In an earlier case, the Indiana Supreme Court stated that in order to establish a new residence, a taxpayer "must show . . . evidence of acts undertaken in furtherance of the requisite intent, which make that intent manifest and believable." In the Matter of *Evrard*, 333 N.E.2d 765, 768 (Ind. 1975).

The Department's regulation provides that "[t]here is no one set of standards that will accurately indicate the person's intent in every relocation." [45 IAC 3.1-1-22](#). Instead, the determination is made on a case by case basis. *Id.* Facts to be considered include:

(1) Purchasing or renting residential property

- (2) Registering to vote
- (3) Seeking elective office
- (4) Filing a resident state income tax return or complying with the homestead laws of a state
- (5) Receiving public assistance
- (6) Titling and registering a motor vehicle
- (7) Preparing a new last will and testament which includes the state of domicile. Id.

In addition, courts have considered a taxpayer's contemporaneous declarations identifying that taxpayer's "home;" insurance policies, mortgages, contracts or other instruments indicating the taxpayer's home; and membership in clubs, churches, or other social groups in a place. Croop, 157 N.E. at 278-79. Finally, courts have considered the location of taxpayer's household goods and mailing address. Board of Medical Registration and Examination v. Turner, 168 N.E.2d 193, 197 (Ind. 1960); See also, Culbertson v. Bd. Of Comm'rs of Floyd County, 52 Ind. 361 (1876). However, a taxpayer "seeking to establish his claim of exemption from taxation on the ground of nonresidence is not required to show that his property was assessed elsewhere." Croop, 157 N.E. at 276.

In order to change one's domicile from Indiana to an out-of-state location, the law requires the "intent of establishing a home at that place," [45 IAC 3.1-1-22](#), along with "acts evidencing [an] intention to make the new domicile a home in fact" Bayh, 521 N.E.2d at 1317.

However, the law also requires a simultaneous manifestation of an intent to abandon the Indiana domicile. Id. As the law states, "[A] person has only one domicile at a given time" [45 IAC 3.1-1-22](#). Significantly, Taxpayer owns an Indiana home and benefited from a Homestead Credit claimed on that home. In doing so, Taxpayer necessarily verified that the Indiana home was his "principal place of residence" and, by doing so, took advantage of the typically significant tax advantage associated with claiming the credit. IC § 6-1.1-12-37(a)(2).

Taxpayer admits that he retains ownership of his Indiana home and makes annual, brief visits to that home. Taxpayer also admits that he previously claimed a "Homestead Credit" on that home. IC § 6-1.1-12-37(f) in part requires:

If an individual who is receiving the deduction provided by this section or who otherwise qualifies property for a deduction under this section:

- (1) changes the use of the individual's property so that part or all of the property no longer qualifies for the deduction under this section; or
- (2) is no longer eligible for a deduction under this section on another parcel of property because:
 - (A) the individual would otherwise receive the benefit of more than one (1) deduction under this chapter; or
 - (B) the individual maintains the individual's principal place of residence with another individual who receives a deduction under this section; the individual must file a certified statement with the auditor of the county, notifying the auditor of the change of use, not more than sixty (60) days after the date of that change.

Taxpayer points out that in accordance with IC § 6-1.1-12-37(f) he took positive steps to revoke the Homestead Credit on the Indiana property after he moved from Indiana to North Carolina and then to Tennessee. Documentation from the Marion County Auditor provided by Taxpayer established that he forfeited the credit and paid approximately \$6,500 in additional local property tax attributable to the forfeiture of the Homestead Credit.

Taxpayer provided a copy of his 2008, 2009, and 2010 North Carolina income tax returns each of which lists a North Carolina address. Taxpayer provided a copy of his 2011 federal income tax return which lists a Tennessee address. In addition, Taxpayer provided copies of a Tennessee marriage license, a January 2011 change of address form filed with the Post Office, a Tennessee Department of Revenue vehicle registration form dated February 2011, a Tennessee vehicle purchase agreement dated August 2010, a second Tennessee vehicle purchase agreement dated June 2011, a Tennessee homeowners insurance policy dated March 2011, a 2011 Tennessee property tax bill, and a Tennessee real estate purchase agreement dated March 2010.

Evaluating the documentation on a "case by case basis" in order to determine Taxpayer's "requisite intent," Taxpayer established that he intended to abandon his Indiana domicile, and manifested "intent and conduct . . . to establish a new domicile." As explained in [45 IAC 3.1-1-22](#), "a person can only have one domicile at a given time" In this case, Taxpayer established that his 2011 domicile was in Tennessee.

Taxpayer was not required to file 2011 Indiana income tax return as a full-year resident of this state.

FINDING

Taxpayer's protest is sustained.

Posted: 09/28/2016 by Legislative Services Agency

An [html](#) version of this document.